

Appln No. 10/667,248
Amdt date January 26, 2006
Reply to Office action of October 6, 2005

REMARKS/ARGUMENTS

Applicant responds to each point raised by the Examiner in the October 6, 2005 Office action as follows:

Elections/Restrictions

In response to the restriction requirement, Applicant elects to proceed with prosecution on the merits with respect to the identified Species C. Species C is directed to Figs. 8-12 and claims 1, 10-17, 21, 22 and 25 read on Species C. The Examiner has indicated that claim 1 is generic.

Specification

The abstract of the disclosure was objected to because it was in claim format rather than narrative form. As reflected above, Applicant is submitting herewith a replacement abstract of the disclosure that obviates this objection.

The specification was also objected to because the sections of the specification were not preceded by their respective headings. The specification has now been amended to include the appropriate headings.

Claim Objections

Claims 1 and 10-17 were objected to because of certain informalities. The claim objections have been addressed and the claims are now in condition for allowance.

Claim Rejections Under 35 U.S.C. § 112

Claims 1, 11, 16 and 17 were rejected under 35 U.S.C. § 112, second paragraph as having insufficient antecedent basis for certain terms. The claims have now been amended to have sufficient antecedent basis and the claims are now in condition for allowance.

Claim Rejections Under 35 U.S.C. § 102

Claims 1 and 11-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Sohngen (U.S. Patent No. 6,921,400).

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Claim 1 of the present invention calls for "a clamping member . . . axially adjustable in the longitudinal bore relative to the nail with the screw guided through the transverse bore of the nail being able to be clamped between the clamping member and the inner wall of the nail bounding the transverse bore by the displacement of the clamping member."

Sohnngen is directed to a modular intramedullary nail for stabilizing a fracture until healing has occurred. Sohnngen discloses an insert 50 that is placed within a chamber 34, the insert including an opening 54. The opening is such that when the insert 50 is placed within the chamber 34, the opening 54 aligns with a longitudinal slot 56 extending through the wall 58 of the nail member 20 against the chamber 34. As can be seen in, for example, FIGs. 9 and 14 of Sohnngen, when a fastener 32 is inserted into the openings 54 in the insert 50, the fastener is not clamped between the clamping member and an inner wall of the nail. Rather, the fastener is clamped against an inner wall of the insert, which has drilled openings to orient the fasteners. Only if the insert were integral with the nail, then could the fastener be considered clamped between the clamping member and an inner wall of the nail. However, Sohnngen does not teach or suggest an insert that is integral with the nail. If the insert were integral with the nail, the insert would not be able to be removed from the nail and the invention disclosed by Sohnngen could not be modular, defeating the purpose of that invention.

Accordingly, Claim 1 is not anticipated by Sohnngen under 35 U.S.C. § 102.

Claims 11-17 are dependent on claim 1. As such, claims 11-17 are allowable for at least the reasons expressed above for claim 1.

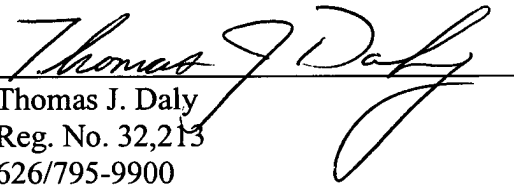
Claim 10 was initially mistranslated from the original specification, but has now been amended to be appropriately translated. Support for the amended claim 10 may be found on page 5, lines 13-17 of the specification. As it now reads, claim 10 is readable on elected Species C because the clamping member has a smaller length than the distance between two sequential transverse bores in the nail. Since claim 10 is dependent on claim 1, claim 10 is allowable for at least the reasons expressed above for claim 1.

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Claim Rejections Under 35 U.S.C. § 103

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Sohngen in view of Stauch et al (U.S. Patent No. 6,416,516). As noted above, claim 17 is dependent on claim 1. Stauch et al. does not disclose or suggest any of the elements of claim 1 absent from Sohngen as noted above. As such, claim 17 is allowable for at least the reasons expressed for claim 1.

Respectfully submitted,
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TJD/cks